IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.354 OF 1989

The State of Maharashtra)...Appellant
Versus
1. Popat Dattatray Kapase,)
Age: 30 years,)

2. Bhanudas Dattatray Kapase,)
Age: 25 years,)

Both R/o.Injbav, Taluka Man,)
District Satara.)...Respondents

Shri S.R. Shinde, A.P.P for the Appellant.
None for the Respondents.

AND

CRIMINAL REVISION APPLICATION NO.161 OF 1989

Shri Maruti Mahadev Kapase,)
R/o.Injbav, Taluka Man,)
District Satara.)...Applicant

Versus

1. Popat Dattatray Kapase,)
Age: 30 years,)

2. Bhanudas Dattatray Kapase,)
Age: 25 years,)

Both R/o.Injbav, Taluka Man,)
District Satara.)

3. The State of Maharashtra)...Respondents

Shri Hitendra Venegaonkar for the Applicant.
None for the Respondent.

CORAM : ABHAY S. OKA, J.
DATE : NOVEMBER 08, 2006.

JUDGMENT:

1. The Criminal Appeal is preferred by the State for challenging Judgment and Order dated 21st January, 1989 passed by the learned Judicial Magistrate (First Class) at Dahiwadi. By the said Judgment and Order, the Respondents have been acquitted of offences under section 325, 324, 323, 504, 506 read with section 34 of the Indian Penal Code. Criminal Revision Application No.161 of 89 is filed by the original complainant for challenging the order of acquittal.

2. Yesterday, I have heard the submissions of the learned Additional Public Prosecutor in support of the Appeal. The learned Advocate appearing for the Applicant in the Revision Application was not present and therefore, both the matters were kept today. When the matters are called out today, the Advocate appearing for the Applicant in the revision Application is not present.

3. It will be necessary to refer to the prosecution case with a view to appreciate the submissions made by the learned Additional Public Prosecutor. According to the case of the prosecution, complainant Maruti is a resident of village Injbav, Taluka Man, District Satara. On 12th May, 1985 at

about 01.00 p.m the complainant Maruti had gone to his agricultural land for watering the crop. According to the case of the prosecution, there is a well in which apart from the complainant the accused persons are the sharers. When the complainant attempted to start the electric motor installed for taking out the water from the well, the Respondents-accused came there and

informed the complainant not to start the engine. The Respondents informed the complainant that they wanted to provide water to their crop. The complainant told them that they had used the water from the well by operating the electric pump for eight days and that his crop was becoming dry for want of adequate water supply. According to the case of the prosecution, the Respondents abused the complainant in filthy language. According to the prosecution case the second Respondent rushed towards the complainant and caught hold of the complainant. As a result, the complainant fell down. The second Respondent gave fist blows on the complainant’s mouth, right eyebrow and nose. The first Respondent assaulted the complainant on his head, shin of the right leg and on the left leg. The complainant raised hue and cry. One Arjun Mahadeo Kapse (P.W.2) came running and rescued the

complainant. The said Arjun brought the complainant to village by putting the complainant in a bullock cart. Thereafter the complainant's father and brother took him to a hospital at Mhasvad. As medical officer was not present, the complainant was taken to Government Medical Centre at Gondavle and was treated there.

4. The learned Additional Public Prosecutor has taken me through notes of evidence and other documents on record. He submitted that the evidence of the complainant Maruti (P.W.3) was consistent and was not shaken in the cross-examination. He submitted that evidence of P.W.4 Dattu Babar completely supports the prosecution. He submitted that the findings of the Trial Court are based on surmises. He submitted that the medical evidence is consistent with the prosecution case. He submitted that guilt of the Respondent was proved beyond a reasonable doubt. He submitted that the impugned Judgment and Order is perverse. None appeared for the Respondents-accused.

5. I have carefully considered the submissions. I have also perused the notes of evidence and the impugned Judgment and Order.

6. P.W.3 Maruti is the complainant. In paragraph No.2 of his deposition he has stated thus:

> "2. The incident happened on 12.5.85 at 1 p.m. on that day, I had gone for watering crops of chilli. It was my turn on that day, to take water. At that time, motor was not working for last 8 days. Therefore, I started my engine. At that time, the accused was near to me, and did not allow me to start engine. Thereafter, the accused abused me, in the words stated in the complainant. The accused No.2 caught my neck and pull me down. When I was lying down on ground, the accused No.2 gave blows on my nose, eyes and mouth. At that time the accused No.1 who was near to the incident came running, holding sped in his hand. Accused No.1 struck said sped on my head from blade side, and beat with buttend on my right leg below knee, and my little finger of right leg. Arjun Mahadev Kapase who was about 50 feet away, came there and separated me from accused. Dattu Babar was

> present at the time of incident. Then Arjun Mahadev Kapase brought me at Inchabav by the bullock cart. Then myself, my father, came to Mhasvad P.H.C. As medical officer was not present at Mhasavad, we came to Gondavale P.H.C. Then we came to the police station and lodged the complaint. The complaint now shown to me bears my signature, contents are correct, it is at Exh.33. I was admitted in P.H.C. at Gondavale for 22 days".

In the cross-examination P.W.3 admitted that on the relevant day, the marriage of daughter of one Vitthal Phartade was being celebrated in the village. He admitted that the accused persons were also having share in well and in the electric motor installed thereon. He admitted that he has not produced any document to show that there was any agreement between him and the accused persons to use the well in shifts. He admitted that as far as injury to his head by blade side of a spade is concerned, he has stated about it in his supplementary statement dated 06th June, 1985.

7. P.W.1 Pandurang Mukutrao Kapse stated that on

12th May, 1985, he was proceeding from the western side of the complainant's land. At that time Arjun Kapse (P.W.2) called him by waiving his hand. Therefore, he went towards well. He saw complainant lying on the land in injured condition. He stated that he helped P.W.2 Arjun for lifting the complainant and keeping him in a bullockcart. There is nothing material in his cross-examination.

8. According to the version of the P.W.3, the P.W.2 Arjun Mahadeo Kapse came to the spot and separated the P.W.3 from the accused persons and the P.W.2 brought him to the village by a bullock cart. However, P.W.2 Arjun did not support the prosecution. He stated that when he went near the well, he found that the complainant was lying near the well. The P.W.2 Arjun was declared hostile. P.W.4 Dattu Babar stated that he was present at the sit and he witnessed the incident. He stated that the first Respondent gave a blow with a spade with its sharp side over the head of the complainant. According to him the complainant fell down and thereafter the second Respondent sat on the chest of the complainant and gave fist blows on the chest and on his face. According to him the first Respondent assaulted the complainant by

the handle of the spade on his legs. He stated that P.W.2 Arjun was also a witness. He stated that the complainant sustained injuries and blood was oozing from the injuries. In the cross-examination nothing material has come on record. P.W.5 Babu is a panch witness to the spot panchnama. There is nothing material in his evidence. P.W.6 Ramchandra is the brother of the complainant. Admittedly, he is not an eye-witness. He deposed that the P.W.2 Arjun Kapse brought his brother in a bullock car to his house and told him that the complainant has been assaulted by the Respondents-accused. He stated that he alongwith his father took the complainant to the police station at Mhasvad by a bullock cart and thereafter to the Government Cottage Hospital at Gondavale where the medical officer treated him.

9. P.W.7 Dr. Jayprakash Narayan Bhosale was at the relevant time employed as a Government Medical Officer at a Primary Health Centre, Gondavle. He has described the injuries found by him on the person of the complainant. The material portion of his evidence reads thus:

"I found following injuries on his person.

> (1) Incise wound from right frontal to right pariatal prominence 6" X 1/2" bone deep, transe verse in direction. Swelling over face. Bleeding present. (2) C.L.W. over left pariatal prominence oblique 3" X 1/2" bone deep bleeding present, swelling over face. (3) painful and restricted movement of both hip joints. Injury No.1 cause sharp edged weapon. 2 and 3 hard and blunt object. Age:-within 24 hours. I have examined him and issued certificate accordingly. He was treated as indoor patient from 12.5.85 to 3.6.86".

He proved the medical certificate issued by him in his evidence. In the cross-examination he admitted that injury Nos.1 to 3 sustained by the complainant can be possible if a person all of a sudden falls down from stairs of the well into the well from the height of about 10 to 15 feet. P.W.8 Ramdas was the Police Head Constable attached to Mhasvad Police Station at the relevant time who recorded the complaint. He recorded supplementary statement of the complainant on 06th June, 1985. He stated that after taking oral permission of the medical officer he recorded the

complaint while the complainant was admitted to the hospital.

10. The learned Trial Judge has disbelieved the version of P.W.3 Maruti by pointing out various discrepancies in the prosecution case. It must be noted that in the F.I.R at Exhibit 33, the complainant has not at all stated about the presence of P.W.4 Dattu Babar at the time of incident or any time thereafter at the spot of the incident. In the F.I.R there is no reference to any assault by any accused on his hand. In the supplementary statement which is recorded on 06th June, 1985, the complainant came up with allegation regarding assault on the head and about presence of P.W.4 Dattu Babar. So far as P.W.2 Arjun is concerned, he has not at all supported the prosecution and he has been declared hostile. Even going by prosecution case, P.W.2 Arjun was the only independent eye-witness. The said witness has chosen not to support the prosecution. P.W.1 Pandurang who has supported the prosecution has not at all deposed about the presence of P.W.4 Dattu at the spot. He has disclosed the presence of only P.W.2 Arjun. As stated earlier, the presence of P.W.4 Dattu was not mentioned by the complainant in the F.I.R and his presence is

mentioned only in the supplementary statement recorded long after the date on which F.I.R was registered. Perusal of the evidence of P.W.4 Dattu shows that his version of the incident of the assault by the Respondents is inconsistent with the evidence of P.W.3 Maruti. The presence of the said Dattu Babar becomes doubtful for the reason that in the F.I.R, his presence was not referred to by the complainant. Moreover, P.W.1 Pandurang who has supported the prosecution has not at all stated about the presence of Dattu. Therefore, it is very difficult to rely upon the evidence of P.W.4 Dattu. Then what remains is the evidence of P.W.3 Maruti himself. The said P.W.3 Maruti has not even stated about the assault on his head and injury to his head in the F.I.R and he has come out with the said version only in the supplementary statement recorded on 06th June, 1985. The allegation is that the accused person used a spade as an instrument of attack. There is no recovery of the spade made by the prosecution. The police did not refer the complainant to the nearest Government Hospital. Though the brother of the complainant has stated that medical officer was not available at the said hospital, no evidence is produced by the prosecution to show that on the relevant date, the

medical officer was not present.

11. According to the case of prosecution, blood stained clothes on the person of the complainant were attached by the police on the day of the incident. However, initially the police registered the non-cognizable case and later on registered a cognizable offence under section 325 read with section 34 of the Indian Penal Code.

12. The panch witness of the alleged spot panchnama has not supported the prosecution in the sense that in the cross-examination he admitted that the police have simply taken his signature on the panchnama. That is the reason why the learned Trial Judge held that spot panchnama is not duly proved.

13. Thus, the conclusion drawn by the learned Judge is certainly a possible conclusion. The findings recorded cannot be said to be perverse.

14. The perusal of the impugned Judgment and Order shows that the learned Judge has considered evidence of each and every witness. The learned Judge has also referred to the documentary evidence on record. The

learned Judge has noted the aforesaid discrepancies in the prosecution case. The Apex Court in the case of **Sachchey Lal Tiwari Vs. State of U.P. [(2004) 11 Supreme Court Cases Page 410]** has held that the Appellate Court while considering an Appeal against the Judgment of acquittal should interfere only when there are compelling and substantial reasons for doing so. In another decision in the case of **Ram Sewak Vs. State of U.P. [(2005) 12 Supreme court Cases Page 143]** the Apex Court held that in an Appeal against acquittal the High Court as a Appellate Court can re-appreciate the evidence and interfere with the findings of the Trial Court, if they are perverse or if the reasons given by the learned Trial Judge are palpably untenable. Merely because another view is possible is no ground to interfere in an Appeal against acquittal. In the present case, the view taken by the Trial Court is certainly a possible view which could have been taken after appreciation of evidence on record. The alleged incident is of the year 1985. The Appeal against acquittal has remained pending from the year 1989.

15. No case is made out for interference. Hence, I pass the following order:

CRIMINAL APPEAL NO.354 OF 1989

. Appeal is dismissed.

CRIMINAL REVISION APPLICATION NO.161 OF 1989

. In view of reasons recorded for dismissal of the Appeal against acquittal, revision Application is rejected.

JUDGE